

California Regional Water Quality Control Board
Santa Ana Region

April 27, 2012

ITEM: 9

SUBJECT: Public Hearing – Basin Plan Amendments: Recreational Standards for Inland Surface Waters (continuation of March 16, 2012 hearing on the proposed amendments) – Supplemental Staff Report

DISCUSSION:

At the March 16, 2012 Regional Board meeting, Board staff and a consultant to the Stormwater Quality Standards Task Force presented in detail the proposed recreation standards amendments to the Basin Plan. This included discussion of comments received from interested agencies and parties, including the U.S. Environmental Protection Agency, Region 9 (USEPA). In light of the USEPA comments, which were unclear and unsubstantiated, Board staff recommended that no action on the proposed amendments be taken at the March meeting. Staff recommended a delay to allow for discussion and resolution of the USEPA concerns. The Board agreed with this recommendation.

Discussion of concerns regarding the proposed amendments took place on April 10, 2012. Regional Board staff and members of and consultants to the Stormwater Quality Standards Task Force met with USEPA staff and State Water Board staff. In response to this discussion, and based on further review of the proposed amendments, some changes to those amendments are now proposed.

This report supplements the Basin Plan amendment documentation, dated January 12, 2012, that included a staff report, environmental analysis document and checklist, and the proposed Basin Plan amendments. The purpose of this supplemental report is to describe the changes now proposed to the amendments and the rationale for those changes. The recommended changes to the amendments are shown in the Errata Sheet attached to this report.

Also attached to this report are: (1) a copy of a message from Vicky Whitney (State Board Deputy Director, Division of Water Quality) to Kurt Berchtold *et al re* "RB 8 Rec 1 Objectives" (see discussion of items 1-4, below); (2) Board staff's responses to USEPA's written comments on the proposed amendments, dated February 23, 2012; (3) Board staff's responses to written comments provided by Heal the Bay on March 15, 2012. **Note:** On April 20, 2012, Heal the Bay submitted additional comments concerning the Use Attainability Analyses components of the proposed amendments. These additional comments were appended to the March 15, 2012 comment letter. The amended comment letter was not signed. Responses to the additional comments will be prepared and provided at the April 27, 2012 hearing.

ERRATA SHEET:

Items 1- 4, p.1-5): REC1 Beneficial Use Nomenclature and Definition:

The amendments presented on March 16, 2012 include recommended changes to the name and definition of the REC1 use. New narrative discussion was also proposed to be added to describe briefly the rationale for these changes.

USEPA and State Water Board staff recommended that any changes to the REC1 definition and name be considered on a statewide basis, rather than in region-specific amendments. State Board staff provided written clarification of their understanding of the types of REC1 activities and associated likelihood of ingestion. State Board staff recognized that ingestion is not reasonably possible with all forms of wading and fishing, a concept addressed in the amendments to the REC1 definition presented on March 12, 2012. A copy of the April 12, 2012 message from Vicky Whitney, Deputy Director, Division of Water Quality at the State Board, providing this clarification is attached to this report.

Taking this written clarification into account, Board staff now proposes not to include the proposed REC1 name change and refinements to the definition of this use in the recreation standards amendments. Rather, Board staff now recommends that: (1) the term “Primary Contact Recreation” be added to the REC1 beneficial use name; (2) the term “Secondary Contact Recreation” be added to the REC2 beneficial use name; and, (3) that the narrative discussion regarding REC1 activities and the application of bacterial quality objectives to those activities be revised to provide the clarification previously sought in the refinements to the definition itself.

Board staff believes that these revised recommendations are consistent with applicable federal guidance, provided that the new *E. coli* objectives are not applied to waterbodies where only incidental or accidental water contact is likely to occur. These revised recommendations should not result in concerns with respect to statewide consistency, since the revisions supplement but do not modify agreed-upon statewide nomenclature.

Item 5, p. 5 - 6: Addition of References:

The proposed revised REC1 narrative described above includes citations to references not previously included in the Basin Plan. Amendment of the list of references is necessary to include these new references.

Item 6, p. 6: MUN Designations for Goodhart Canyon, St. John’s Canyon and Cactus Valley Creeks and Mystic Lake:

The amendments presented at the March 16, 2012 meeting included recommendations for the addition of these waters to the Basin Plan and for the exception of these waters from the MUN (municipal and domestic supply) beneficial use designation. The recommended exceptions were based on the exception criterion specified in the State

Board’s Sources of Drinking Water Policy that “the water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day.”

The waters listed above are ephemeral and it is considered unlikely that they could serve as a source of drinking water supply, specifically, that they could provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day. However, since quantitative data to support this finding are limited, Board staff now recommends that these waters be designated with the MUN beneficial use, intermittent (“I”). This designation should be reviewed in the future based on additional, relevant data and revised if needed.

Item 7, p.6 - 7: Note re Pathogen Indicator Bacteria in Bays and Estuaries:

This note was proposed in order to provide pertinent information concerning the manner in which the Regional Board will implement the enterococci criteria promulgated by the USEPA in 2004 for coastal waters. The promulgation left to state discretion the determination of: (1) the appropriate averaging period for the criteria; and (2) the assignment of coastal recreation waters to one or more recreational use tiers for the purposes of determining the applicable single sample maximum values. The last sentence in the proposed note speaks to the use of best professional judgment to make these determinations until a formal Basin Plan amendment process can be completed to address them. USEPA and State Board staff objected to this approach. They indicated their belief that until a Basin Plan amendment process is completed, the assumptions must be made that (a) the averaging period for the objectives is a 30-day rolling average and (b) that the most stringent single sample maximum value, applicable to designated beaches with high REC1 use, applies to these waters. While Board staff is not persuaded of the merits of this position, it appears appropriate to remove the proposed last sentence pending further deliberation and confirmation of this matter. Accordingly, the last sentence of this note is now proposed for deletion.

Item 8, p. 6 - 7: Narrative re Recreation Water Quality Standards

Consistent with the recommended changes identified in Item 1, above, Board staff recommends deletion of the proposed reference to the clarification of the REC1 definition.

Item 9, p. 7- 8: Narrative regarding the “N” notation in Table 5-REC1-Tiers:

As a matter of clarity, Board staff proposes to include some additional explanatory language regarding the intent of the “N” notation in Table 5-REC1-Tiers.

Item 10, p. 8: Table 5-REC1-Tiers:

Clarification of the notation employed in this table is proposed. The revised table (underline-strikeout version (Attachment 1 to Resolution No. R8-2012-0001)) is shown at the end of the errata sheet (p. 14-20).

Item 11, p. 8 - 9: Narrative re *Application of Single Sample Maximum Values in REC1 freshwaters*:

See discussion of item 7. Board staff proposes to delete the proposed narrative regarding the Regional Board's approach to the assignment of REC1 tiers to fresh surface water streams that are not now included in the Basin Plan. The proposed language speaks to the use of Regional Board discretion based on local knowledge of these streams to make interim tier decisions, until the Basin Planning process is used to formalize those decisions. Once again, it appears appropriate to defer the addition of this language pending further discussion and determination of the appropriate way to proceed.

Item 12, p. 9: Table 5-REC1-ssv notation:

As noted by Board staff during the March 16, 2012 hearing on the proposed amendments, a typographical error in the notation in one of the column headers needs to be corrected.

Item 13, p. 9 - 11: *High Flow suspension of recreation standards*:

Changes to the proposed text describing and defining the applicability of the high flow suspension are proposed. The recommended changes are intended, in part, to make clear that the suspension would apply to engineered channels, as defined, and to channels that are **heavily** modified. The word "**heavily**" would be added at several appropriate places in the proposed text in order to address concerns that the suspension might be applied inappropriately to channels that have had only minor modifications that would not appreciably alter the flow regime, resulting in unsafe conditions that preclude recreational use.

Further, in response to a comment by USEPA staff, text is proposed to be added to specify that the depth-velocity product suspension criterion would not apply to the low-flow pilot channels sometimes constructed in larger channels. Normal dry weather flows in these pilot channels may meet the depth-velocity product suspension criterion, but not necessarily preclude recreational use.

Finally, as discussed at the March 16, 2012 hearing, a paragraph is proposed to be added to the section entitled "Delineation of Engineered or Modified Channels". The intent of this added paragraph is to address concerns expressed by Orange County Coastkeeper that the delineation of the channels to which the suspension would apply

might limit the ability to fund and support habitat and species restoration projects in these channels. The proposed added paragraph makes clear that this is not the intent.

Item 14, p. 11-13: *Antidegradation targets for REC2 only freshwaters:*

The antidegradation targets for REC2 Only waters recommended in the January 12, 2012 proposed amendments are based on the 95th percentile upper confidence level (UCL). As shown in Table 5-REC2 Only Targets – FW and Table 5-REC2 Only Targets – Other Waters, the numeric values are generally high. While these values are calculated using standard mathematics, the inherent variability of the data renders the numbers generally very high. This may result in the perception that water quality is not being adequately protected. As discussed at the March 16, 2012 public hearing, a revised approach, using the 75th percentile upper confidence level is proposed. There is no substantive effect with respect to the intent to prevent water quality degradation, but the lower 75th percentile values may reduce the potential public perception problem.

The recommended text and tables have been revised to reflect this alternative approach. A table note is proposed to be added to each of the tables to reflect that the targets are calculated for dry weather baseflow conditions only and do not apply to samples collected during wet weather conditions. Further, minor changes in the narrative are recommended to clarify follow-up in case of exceedances of the targets.

Item 15, p. 13: References to antidegradation target calculation documentation.

To address the change in antidegradation targets from the 95th to 75th percentile upper confidence level, the relevant documentation prepared by CDM and Regional Board staff has been revised and re-dated. The appropriate changes to those references are shown in the Errata Sheet.

Errata Sheet, p. (14-20): revised Table 5-REC1-Tiers

CEQA Consideration:

Regional Board staff has considered whether the changes to the proposed amendments identified in the Errata Sheet would have any effect on the environmental checklist and analysis document and the preliminary determination by Board staff that the proposed amendments would not have a significant effect on the environment. Board staff concludes that the changes recommended in the Errata Sheet would not substantively affect implementation of the revised recreation standards and therefore, would have no effect on the environment. Board staff's preliminary determination, as specified in the environmental analysis document dated November 30, 2011 (Attachment C to the January 12, 2012 staff report concerning the amendments), remains proper.

RECOMMENDATION:

Board staff recommends that the Regional Board adopt Resolution No. R8-2012-0001, thereby:

- (1) Confirming the preliminary determination by Regional Board staff that the proposed amendments could not have a significant effect on the environment and certifying the environmental checklist and analysis document (Attachment C to the January 12, 2012 staff report); and,
- (2) Adopting the Basin Plan amendments delineated in Attachment 1 and Attachment 2 to Resolution No. R8-2012-0001, as modified by the Errata Sheet.

Attachments:

- (1) Errata Sheet
- (2) Copy of April 12, 2012 message from Vicky Whitney (State Board staff) to Kurt Berchtold *et al* re “RB 8 Rec 1 Objectives”
- (3) Board staff responses to the USEPA comments dated February 23, 2012.
- (4) Board staff responses to Heal the Bay comments dated March 15, 2012.